

EXHIBIT 4

**LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
JULY 2005 CALENDAR**

HERNANDEZ, HECTOR

D33689

I. COMMITMENT FACTORS:

- A. Life Crime:** Murder second, 187 P.C., Fresno County Case #336275-3, with the Use of a Firearm (gun) 12022.5 P.C. Sentenced to 15 years plus 2 years enhancement. Total term 17 years to Life; MEPD: 4/21/97; received by CDC: 7/7/86. Victim: Silvestere Bustos, Age: Unknown.

1. **Summary of Crime:** On 8/15/85, at approximately 3:56 a.m., Officer F. Lopez was dispatched to 2448 South 11th #4, Calwa, regarding an injured person. Upon arrival Officer Lopez met four Mexican males and one female standing outside the residence. Upon entering the living room of the residence, the officer observed a Mexican male subject lying on the floor with a large pool of blood under the chest and face area. The victim was pronounced dead at the scene. The victim was identified as Silvestere Odulio Bustos. Subsequent investigation determined that the victim had been shot at close range by a shotgun. The officer's made contact with several witnesses to the crime, one of whom was Enriquez Casias (a roommate of the victim). He testified that at 3:00 a.m. on 8/15/85 there was a knock on the door at which time he (Casias) observed Hernandez standing there. Hernandez asked Casias if he had some heroin then gave him \$20.00. Casias said he told Hernandez let me see if my friend has some, referring to the victim Bustos. Casias was getting "pieces" from Bustos boots when Hernandez kicked open the door and entered the residence with a shotgun and stated, "give me the gun and give me the chiva," which means heroin. According to Casias, as soon as Hernandez said, "give me the gun" Hernandez shot Bustos. The Probation Officer's Report (POR) indicates that several witnesses were interviewed and that their statements correlated with Casias' statement. They also related in part that Hernandez had been to the residence on numerous occasions to purchase drugs and one day prior to the incident, had been in an argument with the victim about money. Hernandez was convicted of the crime by jury trial on 5/13/86. [Source: document POR pages 2 and 3.]
2. **Prisoner's Version:** In an interview for this report, Hernandez indicated that his version remains the same as stated in the addendum Subsequent Hearing #5 dated February 2004 remains the same. In the addendum,

COPY TO INMATE ON
June 13, 2005

he stated the following: "In order to make a statement that would give some clarity and resolution, I would practically have to answer the question of, 'What is the meaning of Life and Death?' As difficult and at times overwhelming as this task is, it is what I've endeavored to do.

I should say my opponent (who became the victim) had been stealing from me and threatening my life, and that the actual gunshot which took his life was fired in self defense. All of which is true. Yet in order to reach a greater and healthier understanding, I would first have to admit responsibility which is what I've done. A few of the areas I addressed (in order to gain a deeper understanding of the crime I committed) includes my childhood, peer environment and spirituality only after extensive self-examination in those areas I have reached the conclusion that I needed a major adjustment in the way I relate to others, which entails developing a great integrity for morals and ethics. This is an ongoing process with continual room for improvement. Suffice to say that this journey of recovery and healing is something I'll be doing for the rest of my life."

3. **Aggravating/Mitigating Circumstances:**

a. **Aggravating Factors:**

1. The victim, was particularly vulnerable in that the prisoner entered the victim's home and shot him while he was lying on his couch and awakened by the prisoner.
2. The prisoner had a history of criminal behavior for which the term is being enhanced under BPT Rule 2286.
3. The prisoner engaged in other reliably documented criminal conduct (attempted drug purchase) which was an integral part of the crime for which he is currently committed.
4. The inmate was on probation at the time the crime was committed.
5. During the commission of the crime, the prisoner had a clear opportunity to cease but instead continued.
6. The manner in which the crime was committed created potential for serious injury to persons other than the victim of the crime.

b. **Mitigating Factors:**

1. The prisoner participated in the crime under partially excusable circumstances (heroin, inebriation) that do not amount to a legal defense.

B. **Multiple Crime(s):** N/A.

1. Summary of Crime: N/A.
2. Prisoner's Version: N/A.

II. PRECONVICTION FACTORS:

A. Juvenile Record:

- 07/31/70 Burglarized doctor's office in Fresno, removed \$80.00 cash. Disposition placed on informal probation.
- 10/5/70 Burglary/entered a residence, removed 9 different types of weapons, a polaroid camera, and a radio. Disposition: placed on probation without wardship until 5/23/71. Case dismissed: 5/19/71.
- 04/22/71 Burglary/entered Mission Baptist Church and removed \$10.50. Disposition: probation ordered; then released to parents.
- 09/23/71 Petty theft subject and accomplice stole \$190.00 from Luallen's 76 Service Station. Disposition: remain ward of the court, pay restitution, work program Samger PD.
- 06/29/72 Burglary. Disposition: commit to youth center; detain juvenile hall pending transfer.
- 07/18/72 Defendant and accomplice were found inside the closed business of Padillas Market. Disposition: remain ward of court on probation. Commit to youth center suspended.

B. Adult Convictions and Arrests:

- 01/10/80 Carrying a concealed weapon, carrying a loaded weapon, receiving stolen property. Disposition: none.
- 11/12/80 Burglary. Disposition: none.
- 11/14/80 Burglary. Disposition: none.
- 10/06/84 Harboring a federal fugitive. Disposition: convicted sentence to 358 days in a federal correctional institution.

08/25/82 Sale or transport marijuana, burglary, transport/sale controlled substance. Disposition: all charges dismissed.

10/26/84 Under the influence of a controlled substance/obstruct/resist arrest. Disposition: none.

C. **Personal Factors:** Hernandez was born on 2/28/59 in Fresno California to Guadalupe Hernandez and Delores Mejia. He is one of eight children. His brother, Guadalupe Hernandez Jr. was also convicted of murder in an unrelated case. His brother is currently housed at California State Prison, Corcoran. Hernandez completed the 10th grade at Sanger High School in 1975 and passed his general education development (GED) test on 5/4/92. He also indicated he completed vocational training in welding at Valley Technical and Trade School in Fresno. Hernandez married Janice Ramirez on 10/2/82 in San Bernardino. Four children were born to this union. The marriage is no longer in tact. His work history consists of agricultural related labor. He admitted being a daily user of heroin, using between \$20 to \$40 dollars worth of heroin every day. He also admitted to being a regular consumer of beer, as well as sniffing glue and paint and using PCP, LSD and cocaine occasionally. While Hernandez was incarcerated in the county jail, he was prescribed Synquad. Hernandez has not received an psychiatric treatment or medication since coming into the California Department of Corrections.

III. **POSTCONVICTION FACTORS:**

- A. **Special Programming/Accommodations:** None.
- B. **Custody History:** The prisoner was received at the California Medical Facility for his initial processing on 7/7/86. He was transferred and was received at Folsom-IV on 7/29/86. He was subsequently transferred and received at the Correctional Training Facility on 10/7/03. On 10/14/86, he received his Initial Classification and was assigned Close B Custody and released to the general population. He was assigned to the PIA textiles program as a machine operator and earned satisfactory work grades. On 1/26/89, he transferred to California Men's Colony as a medical case and returned awaiting medical treatment. The prisoner returned to CTF from CMC-E on 4/12/89. On 1/22/90, during Annual Program Review, his custody was reduced to Medium A. He was assigned to the CTF Central Facility Boiler Room. He was unassigned on 9/3/91, non-adversely from his boiler room assignment. He was reassigned to the lunch box crew on 10/19/91. On 4/22/93, the prisoner transferred to North Kern State Prison under Medium A custody. He was assigned to the vocational mill and cabinet and teacher's aide position. On 12/21/95, the prisoner was assigned to a clerk's position. On 9/16/97, he was received at CTF. He received his Initial Classification and custody was established at Medium A and he was released to the general population. While at CTF, the prisoner's work assignments included

textiles, vocational graphics and print. He completed the vocational graphic and print program per Instructor K. Eng. The prisoner subsequently transferred to the East Dorm for housing and job placement. He was assigned to the landscape and painter's position on 4/11/03. However there are no CDC 101's noting the prisoner's work performance during that period noted in the Central File. The prisoner is currently assigned to the PIA Wood Furniture Factory Assembly Shop. His work supervisor's reports (CDC 101s) dated 9/1/04 and 12/1/04 reflect satisfactory to above average work grades. His supervisor's comments were: Hernandez continues to work well with other inmates. However, during this review period the prisoner's Central File did not reflect any documents of any educational or vocational upgrading experience.

- C. **Therapy and Self-Help Activities:** Participated in Narcotics Anonymous group meetings for the first, second, third and fourth quarters of year 2004 (January, February, March, April, May, June, July, August, September, October, November, and December). The prisoner was elected by the group to be its co-chairperson.
- D. **Disciplinary History:** None during this review period.

CDC 115s

02/10/99	CTF	3062(e)	Hair exceeding 3 inches in length. Disposition: <u>Guilty</u> : 20 hours of extra duty. Counseled and reprimanded.
10/10/92	CTF	3053	Misuse (stealing) state food. Disposition: <u>Guilty</u> : 20 hours extra duty. warned and reprimanded.
09/10/92	CTF	3191(B)	Out of possession of non-expandable personal property. Disposition <u>Guilty</u> : 40 hours extra duty.
09/02/92	CTF	3053	Stealing state food. Disposition: <u>Guilty</u> : 20 hours extra duty. Counseled and reprimanded.
12/18/91	CTF	3016	Possession of Inmate Manufactured Alcohol. Disposition: <u>Guilty</u> : 90 days LOC.
12/18/91	CTF	3006	Possession of Utility Knife Blade (dangerous contraband).

Disposition: Guilty: 30 days LOC.
Counseled and reprimanded.

11/18/90 CTF 3004 Disrespect towards staff.
Disposition: Guilty: Counseled and
reprimanded.

CDC 128As

06/17/00	Disregarding yard recall procedures.
03/25/94	Excessive contact with visitor.
06/20/92	Stealing state property.
06/18/92	Stealing state property.
04/14/92	Unauthorized absence.
03/26/90	Unauthorized absence.
03/05/90	Destruction of state property.
09/29/89	Unauthorized possession.
01/17/89	Excessive contact with visitor.
11/06/88	Out of bounds.
06/14/88	Absent from job.

- E. **Other:** On 7/1/04, Hernandez appeared before the Board of Prison Terms for his Subsequent Parole Consideration Hearing #5. The Board denied parole for (1) year and recommended that he remain disciplinary free, upgrade educationally/vocationally, participate in self help substance abuse programs and cooperate with the clinicians in the completion of a new psych report.

IV. **FUTURE PLANS:**

- A. **Residence:** The prisoner states that he plans to live with his parents, Mr. Guadalupe and Lolita Hernandez, located at 842 Edgar Street, Sanger, California 93657. Telephone number (559) 875-3482. The prisoner indicates that he has an alternate address as a residence with his sister, Ms. Hope Hernandez who resides at 2362 North View, Selma, California 93662; telephone #(559) 896-3802.
- B. **Employment:** The prisoner indicates that his main desire is to work as a counselor in the recovery with youth and drug offenders and violence intervention. However, Hernandez did not offer any letters of interest from any potential employers indicating job offers at this time.
- C. **Assessment:** The prison indicates he has family support and a place to live if he is granted parole. However, he did not submit any potential job offers from employers or have a viable employment parole plan at this time.

V. USINS STATUS: N/A.

VI. SUMMARY:

- A. Prior to release the prisoner could benefit from by:
 - 1. Remaining disciplinary free.
 - 2. Participate in self help/substance abuse programs.
 - 3. Cooperate in the completion of a new psych report.
- B. This report is based upon an interview with the prisoner on 3/29/05, lasting approximately 1 hour and a complete review of the Central File lasting 3 hours.
- C. The prisoner was afforded an opportunity to examine his Central File on 3/29/05. He declined to review his file pursuant the Olson Decision. The 128B is located in the general section of the Central File.
- D. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.



H. Staten
Correctional Counselor I

5-5-05

Date



R. Leach
Correctional Counselor II

6/3/05

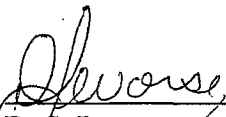
Date



R. Pope
Facility Captain

6-6-05

Date



D. S. Levorse
Classification and Parole Representative

6-7-05

Date

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

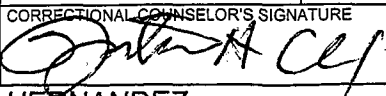
LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
12/16/03 to 12/15/04			<p>PLACEMENT: Remained at the Correctional Training Facility II and housed in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None during this review period.</p> <p>ACADEMICS: None during this review period.</p> <p>WORK RECORD: Assigned to the PIA Furniture Assembly Shop. He earned satisfactory to above average work grades per his work supervisor's reports (CDC 101s) dated 9/1/04 and 12/1/04. His supervisor's comments were: Hernandez continues to work well with other inmates.</p> <p>GROUP ACTIVITIES: Participated in Narcotics Anonymous group meetings for the first, second, third, and fourth quarters of year 2004 (January, February, March, April, May, June, July, August, September, October, November and December) per 128Bs dated 10/1/04, 3/24/04 and 2/22/04. Hernandez was also elected by the group its co-chairperson.</p> <p>PSYCH. TREATMENT: None due to this review period.</p> <p>PRISON BEHAVIOR: None during this review period.</p> <p>OTHER: N/A.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE 			DATE 5/5/05
HERNANDEZ	D33689	CTF-SOLEDAD	JUL/2005

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
12/16/04 to 4/7/05 (Present)			<p>PLACEMENT: CTF II and housed in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None during this review period.</p> <p>ACADEMICS: None during this review period.</p> <p>WORK RECORD: Assigned to the PIA wood furniture factory assembly shop. There are no work supervisor reports (CDC 101s) noted in the Central File during this review period.</p> <p>GROUP ACTIVITIES: There are no CDC 128Bs to note participation in self help therapy or programming.</p> <p>PSYCH. TREATMENT: None during this review period.</p> <p>PRISON BEHAVIOR: None during this review period.</p> <p>OTHER: On 3/29/05, in preparation for the scheduled Board of Prison Terms Lifer Prisoner Hearing, Inmate Hernandez declined to review his Central File pursuant the Olson Decision.</p>

ORDER:

- | | | | | |
|--------------------------|----------------------|---------|--------------------------|-----------------------------------|
| <input type="checkbox"/> | BPT date advanced by | months. | <input type="checkbox"/> | BPT date affirmed without change. |
| <input type="checkbox"/> | PBR date advanced by | months. | <input type="checkbox"/> | PBR date affirmed without change. |

SPECIAL CONDITIONS OF PAROLE:

- | | |
|--------------------------|---|
| <input type="checkbox"/> | Previously imposed conditions affirmed. |
| <input type="checkbox"/> | Add or modify |
| <hr/> | |
| <input type="checkbox"/> | Schedule for Progress Hearing on appropriate institutional calendar |

HERNANDEZ

D33689

CTF-SOLEDAD

JUL/2005

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

EXHIBIT 5

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

HECTOR HERNANDEZ)
_____)
_____)

CDC Number D-33689

**INMATE
COPY**

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

JUNE 8, 2006

11:20 A.M.

PANEL PRESENT:

TOM SAWYER, Presiding Commissioner
SUZANNE ROTH LISBERGER, Deputy Commissioner

OTHERS PRESENT:

HECTOR HERNANDEZ, Inmate
MARY ANN TARDIFF, Attorney for Inmate
CORRECTIONAL OFFICERS, Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Ramona Cota

Peters Shorthand Reporting

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 PRESIDING COMMISSIONER SAWYER: Fifty-
4 six, 12:56 in the afternoon and everyone has
5 returned to the room in the matter of
6 Mr. Hernandez. The panel has reviewed all of
7 the information received from the public and
8 relied on the following circumstances in
9 concluding the prisoner is suitable for parole.

10 INMATE HERNANDEZ: Thank you, thank you,
11 thank you.

12 PRESIDING COMMISSIONER SAWYER: And would
13 not pose an unreasonable risk of danger to
14 society or a threat to public safety if released
15 from prison. Congratulations.

16 DEPUTY COMMISSIONER ROTH LISBERGER: You
17 okay, want some Kleenex?

18 INMATE HERNANDEZ: I'll be fine thank
19 you.

20 PRESIDING COMMISSIONER SAWYER: Is it
21 sinking in?

22 INMATE HERNANDEZ: Thank you very much.

23 PRESIDING COMMISSIONER SAWYER: You've
24 never heard that before have you?

25 INMATE HERNANDEZ: Never have, no.

26 PRESIDING COMMISSIONER SAWYER: You did a

27 HECTOR HERNANDEZ D-33689 DECISION PAGE 1 06/08/06

1 remarkable job.

2 INMATE HERNANDEZ: Thank you sir. Thank
3 you sir. I want to look you in the eye and tell
4 you thank you. Thank you, thank you.

5 DEPUTY COMMISSIONER ROTH LISBERGER: Your
6 welcome. You earned it. You've gone down a
7 long road. You're still on that journey.

8 INMATE HERNANDEZ: Yes. And I will
9 remain on it too.

10 PRESIDING COMMISSIONER SAWYER: The
11 prisoner has no juvenile record of assaulting
12 others. While in prison he's enhanced his
13 ability to function within the law upon release
14 through participation in educational programs.
15 He's attained his GED. Probably one of the
16 things that we feel very strongly about in this
17 case is your Buddhist Meditation, the last three
18 years and the letter of commendation from Tim.
19 That was pretty compelling. Because not only
20 did we read that letter and think, okay, letter
21 of commendation. This guy really likes him.
22 But I think you displayed it here today. I knew
23 you displayed it. We both feel you displayed
24 it. You're not just telling us that you believe
25 this, you're showing us.

26 DEPUTY COMMISSIONER ROTH LISBERGER: You
27 HECTOR HERNANDEZ D-33689 DECISION PAGE 2 06/08/06

1 live it.

2 PRESIDING COMMISSIONER SAWYER: So that
3 was very compelling. As well as your closing
4 speech. I can honestly tell you I've been doing
5 these for eleven months. I started last July
6 1st. And I've never, ever heard a closing
7 remark better than yours. That was well thought
8 out. It was well read. And it was very
9 sincere. You're a very serious guy. And I
10 think you have the courage of your convictions.
11 I really do. And so let the record reflect that
12 you, during your speech that you did not falter
13 and during your speech pulled some beaded
14 artwork from around your neck and displayed that
15 with an eagle and an American flag and a bear on
16 the back and even turned it around. I mean you
17 could probably use both hands huh? You can eat
18 with both hands right (laughter from inmate)?
19 If you played golf you'd hit either side of the
20 ball, it doesn't matter. Very articulate.
21 Another issue in self-help programs and this is
22 very meaningful as you got 11 years in NA.
23 You've clearly articulated to us how important
24 that is. You're also the co-chairman. How long
25 have you been the co-chairman?

26 INMATE HERNANDEZ: Off and on for quite a
27 HECTOR HERNANDEZ D-33689 DECISION PAGE 3 06/08/06

1 while.

2 PRESIDING COMMISSIONER SAWYER: Yeah,
3 because I saw it back in the history there too.
4 You've had ten weeks of hep C. You've had a 13-
5 week course of IMPACT and these are just the
6 most recent courses. We're not going all the
7 way back to the beginning here. Through PIA
8 viewed the inmate employability program. Some
9 very important issues in terms of your
10 vocational programs. Your vocational welding,
11 arc welding certificate. That's a marketable
12 skill that can be used in your future. You do
13 have some, well you don't have a certificate,
14 you've got vocational graphic arts and printing.
15 That was in about three years ago. Currently
16 you're working in the furniture factory with
17 above average work reports for PIA. And you
18 have a certificate in mill and cabinet, right?

19 INMATE HERNANDEZ: Yes.

20 PRESIDING COMMISSIONER SAWYER: Okay.
21 You've received numerous laudatory chronos
22 behind your NA. That's so important given your
23 history and the commitment offense. Your
24 involvement with NA is very, very important.
25 You committed the crime as a result of a
26 significant stress in your life. This is not an

1 excuse. We're not in any way, shape or form
2 saying that you had stress in your life. But
3 you were out of control. You started at 11
4 years of age burglarizing. You didn't have any
5 respect for anybody's stuff or yourself more
6 importantly. And that stress was self-induced,
7 substance abuse. It looks like you've done just
8 about everything. Paint, glue, you're lucky to
9 be alive today.

10 INMATE HERNANDEZ: Yes.

11 PRESIDING COMMISSIONER SAWYER: Because
12 we know horror stories about paint and glue.
13 You lack a significant criminal history of
14 violent crime. You got lots of substance abuse
15 history. You've got a lot of burglaries. Again
16 taking people's stuff when they weren't looking.
17 Going to the markets, going into a pharmacy or
18 doctor's office and taking money. You have
19 realistic parole plans. While they do not have
20 a job offer you have a tremendous amount of
21 family support. You've got two places to live,
22 one in Sanger, one in Selma with your mom and
23 dad in Sanger, the old family homestead. And
24 with your sister in Selma. What with your arc
25 welding this is for the record, these are both
26 farming communities. And mill and cabinet work,
27 HECTOR HERNANDEZ D-33689 DECISION PAGE 5 06/08/06

1 woodwork as well as arc welding clearly are
2 marketable skills and could very valuable in
3 those areas. Do you agree?

4 **INMATE HERNANDEZ:** I agree.

5 **PRESIDING COMMISSIONER SAWYER:** So we
6 don't feel that given your what we've seen here
7 today as well as the skills that you have, we
8 don't have a problem that you can get out there
9 and get a job. You're still young enough to do
10 that. You don't have any physical maladies and
11 so you're in good shape there. We feel that
12 because of your maturation, your growth, greater
13 understanding and your age at this time which is
14 not prohibitive in terms of working, this has
15 reduced your probability of recidivism. We
16 don't think you're going to come back. We feel
17 comfortable that we release you, you're going to
18 be a success in whatever you endeavor.
19 Institutional behavior, while you do have seven
20 115's, none, none of them are violent.

21 **INMATE HERNANDEZ:** Okay.

22 **PRESIDING COMMISSIONER SAWYER:** And the
23 last one was in 1999. It was for long hair and
24 that's a violation of the rule, clearly. You've
25 had eleven 128's. The last one being in the
26 year 2000. So you've distanced yourself from

27 **HECTOR HERNANDEZ D-33689 DECISION PAGE 6 06/08/06**

1 any of the discipline problems that you had.
2 You had some streaks there. You weren't
3 programming well. You weren't doing anything
4 well. But you've certainly gotten the handle on
5 that. We feel you show a sign of remorse. It
6 indicates that you understand the nature and the
7 magnitude of the offense, accepts responsibility
8 for the criminal behavior and has the desire to
9 change towards good citizenship. Give me an
10 affirmative.

11 **INMATE HERNANDEZ:** That's an affirmative,
12 that's obviously a duty.

13 **PRESIDING COMMISSIONER SAWYER:** Okay.

14 **INMATE HERNANDEZ:** Absolutely.

15 **DEPUTY COMMISSIONER ROTH LISBERGER:** The
16 tape machine doesn't read your nods though
17 (laughter by all).

18 **PRESIDING COMMISSIONER SAWYER:**
19 Commissioner Rothlisberger.

20 **DEPUTY COMMISSIONER ROTH LISBERGER:**
21 Absolutely, Dr. Reed back in 1999 which is your
22 prior psych report had written that your
23 violence potential within a controlled setting
24 is considered to be below average. Released to
25 the community violence potential is considered
26 to be no more than the average citizen. But did

1 say that heroin abuse did present a significant
2 risk factor. And this inmate does appear to
3 have a heroin abuse problem. This was in '99
4 and you continued participation in NA during
5 your incarceration as well as a contingency of
6 parole is suggested. And Dr. Macomber in his
7 most recent psychological evaluation states of
8 course on the Axis I, you have no mental
9 disorder, Axis II, no personality disorder. He
10 agreed with Dr. Reed and says that the potential
11 for dangerousness behavior in the institution
12 agrees with the prior evaluator, below average
13 in comparison to other inmates. Never received
14 any disciplinaries for aggressive, violent or
15 dangerous behavior. And stated again that in
16 1991 when you underwent serious life changes.
17 When you got clean and sober.

18 INMATE HERNANDEZ: That's it.

19 DEPUTY COMMISSIONER ROTH LISBERGER: And
20 considering potential for dangerous when
21 released to the community, the level of service
22 inventory revised, you retained a score of 4.2.
23 Means that if a hundred men were released on
24 parole you're expected to do better on parole
25 than 95.8 of them. But agrees also with the
26 prior evaluator that you do not pose any more

1 risk to the community at this time in his life
2 than the average citizen. In fact probably
3 poses less risk due to is growth, maturity and
4 improvement. And found no significant risk
5 factors. Again I believe we have this on the
6 record before but you have excellent wood
7 working skills. You are able to obtain
8 employment. Considerable family support. And
9 your level of insight and self-understanding is
10 impressive. I know it impressed the panel. You
11 obviously have undergone significant mental,
12 spiritual and emotional changes over the years
13 of incarceration. And the doctor concludes with
14 the prognosis for successful adjustment in the
15 community is excellent. Commissioner.

16 PRESIDING COMMISSIONER SAWYER: Thank
17 you. And it's okay to smile a little
18 (laughter). You don't have to be so stoic.

19 DEPUTY COMMISSIONER ROTH LISBERGER:
20 You're so serious.

21 PRESIDING COMMISSIONER SAWYER: Okay the
22 base term of confinement, we're going to do the
23 numbers here. In fact I've given --

24 DEPUTY COMMISSIONER ROTH LISBERGER:
25 Counsel.

26 PRESIDING COMMISSIONER SAWYER: Counsel,

27 HECTOR HERNANDEZ D-33689 DECISION PAGE 9 06/08/06

1 a copy of this for you. The base term offense
2 for which the prisoner has been convicted is
3 murder in the second degree, PC 187, 12022., in
4 addition 12022.5. The offense occurred on 8/15
5 of 1985. The term is derived from the matrix
6 located in the California Code of Regulations,
7 Title 15 at 2403(c), second degree murder.
8 Offense committed on or after 11/8 of 1978. The
9 panel finds the Category 1C is appropriate. 1
10 would be participating victim, victim was an
11 accomplice or otherwise implicated in a criminal
12 act with the prisoner during which the result of
13 the death occurred, drug dealer. There was an
14 illegal act going on here. And that led up to
15 this particular murder. The C is severe trauma,
16 death resulted from severe trauma inflicted with
17 deadly intensity, a shotgun. A shot to this
18 victim and killing him. We have a choice of
19 three numbers. A mitigating number, a middle
20 number or an aggravated number. Given the
21 circumstances of this case we're going to take
22 the middle number of 18 years. We assess 216
23 months which is 18 years for the base offense.
24 And this is how it comes out. We're adding
25 because you used a weapon in this 12022.5 charge
26 on that, 24 months. So now that brings up to
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1 240 months. Which is in my head 20 years.

2 DEPUTY COMMISSIONER ROTH LISBERGER: Yes
3 (laughter).

4 PRESIDING COMMISSIONER SAWYER: Okay.
5 Post-conviction credit, post-conviction credit.
6 from the date the life term started, that's
7 12/22 of 1986 to today's date, 6/8 of '06 is 60
8 months. Do you know what the post-conviction
9 credit is? Do you know what I'm talking about
10 here?

11 INMATE HERNANDEZ: Generally, not
12 exactly.

13 PRESIDING COMMISSIONER SAWYER: You get
14 four months a year for every year you don't have
15 a 115.

16 INMATE HERNANDEZ: All righty.

17 PRESIDING COMMISSIONER SAWYER: And you
18 got five years. Now some years you had two
19 115's so it's not, we're not taking seven years
20 off. What we're taking is, what did we took,
21 took five, four or five.

22 DEPUTY COMMISSIONER ROTH LISBERGER: How
23 did we get to 60?

24 PRESIDING COMMISSIONER SAWYER: We added
25 the, he had --

26 ATTORNEY TARDIFF: He had seven, okay --

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1 PRESIDING COMMISSIONER SAWYER: He had
2 seven 115's but some of them were multiple --

3 DEPUTY COMMISSIONER ROTH LISBERGER: Were
4 in the same year.

5 ATTORNEY TARDIFF: So it was more than
6 five years or whatever. How many years were --

7 DEPUTY COMMISSIONER ROTH LISBERGER: What
8 did I do with the --

9 PRESIDING COMMISSIONER SAWYER: It was 76
10 months total.

11 DEPUTY COMMISSIONER ROTH LISBERGER: Oh,
12 here we go. Yeah it was 76 months minus 16.

13 PRESIDING COMMISSIONER SAWYER: Minus 16.
14 We gave you four years because --

15 DEPUTY COMMISSIONER ROTH LISBERGER:
16 Right.

17 PRESIDING COMMISSIONER SAWYER: These
18 seven 115's occurred --

19 DEPUTY COMMISSIONER ROTH LISBERGER:
20 Didn't all happen in different years.

21 PRESIDING COMMISSIONER SAWYER: -- over a
22 four year period.

23 DEPUTY COMMISSIONER ROTH LISBERGER:
24 Right.

25 ATTORNEY TARDIFF: So he didn't get the
26 credit for four years.

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1 PRESIDING COMMISSIONER SAWYER: He didn't
2 get the credit for four years.

3 DEPUTY COMMISSIONER ROTH LISBERGER:
4 Right.

5 PRESIDING COMMISSIONER SAWYER: He lost
6 16 months.

7 DEPUTY COMMISSIONER ROTH LISBERGER:
8 Right.

9 PRESIDING COMMISSIONER SAWYER: So he had
10 76 months of credit. We took 16 months off of
11 that which gives you 60, five years. So we're
12 going from 20 years down to five years. Twenty
13 years minus five years gives you a total of 118
14 -- of a 180 months, which is 15 years
15 essentially, 15 or 14.

16 ATTORNEY TARDIFF: Wait a minute, the
17 credit is four --

18 PRESIDING COMMISSIONER SAWYER: Fifteen
19 years.

20 ATTORNEY TARDIFF: -- four months off for
21 each year of no 115's. How many years was he
22 115 free?

23 PRESIDING COMMISSIONER SAWYER: Well we
24 figured his time at 19 years because it'll be 20
25 years in December.

26 ATTORNEY TARDIFF: Okay.

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1 DEPUTY COMMISSIONER ROTH LISBERGER:

2 Right.

3 PRESIDING COMMISSIONER SAWYER: If we
4 figured his time at 19 years that he's been
5 down.

6 ATTORNEY TARDIFF: And five years. He
7 wasn't credited with five years.

8 PRESIDING COMMISSIONER SAWYER: He was
9 credited for five years.

10 DEPUTY COMMISSIONER ROTH LISBERGER: He
11 was.

12 PRESIDING COMMISSIONER SAWYER: He was
13 given five years credit, 60 months.

14 ATTORNEY TARDIFF: No, but how many years
15 of 115's?

16 DEPUTY COMMISSIONER ROTH LISBERGER: Well
17 I have times four, 19 years times four.

18 ATTORNEY TARDIFF: That would be 15 years
19 of good time.

20 PRESIDING COMMISSIONER SAWYER: That's
21 correct.

22 DEPUTY COMMISSIONER ROTH LISBERGER:
23 That's correct.

24 ATTORNEY TARDIFF: Times four gives him,
25 that's how you got the 60.

26 //

1 DEPUTY COMMISSIONER ROTH LISBERGER:

2 That's how we got there. We just -- Right.

3 PRESIDING COMMISSIONER SAWYER: There are
4 several ways you can go.

5 ATTORNEY TARDIFF: Okay. You went the
6 other way.

7 DEPUTY COMMISSIONER ROTH LISBERGER: Thank
8 you counsel.

9 ATTORNEY TARDIFF: Thank you.

10 PRESIDING COMMISSIONER SAWYER: I move
11 slow (laughter).

12 ATTORNEY TARDIFF: That's where the 60
13 months comes in.

14 PRESIDING COMMISSIONER SAWYER: Okay so
15 you have 180. Your date then would be 15 years
16 from 12/22 of 1986.

17 INMATE HERNANDEZ: Okay, very good.

18 PRESIDING COMMISSIONER SAWYER: So you've
19 served that 15 years plus. All right. Let's
20 finish your conditions for you. And I'm going
21 to ask you at the end of this if there is, if
22 you have any problem with any of these
23 conditions. These are imposed. Do not use
24 alcoholic beverages. Submit to alcohol testing,
25 submit to anti-narcotic testing, submit to THC
26 testing, participate in substance-abuse programs
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1 such as AA or NA. Attend outpatient clinic. Do
2 you have any problems with any of those?

3 INMATE HERNANDEZ: I have no problem with
4 any of that.

5 PRESIDING COMMISSIONER SAWYER: I would
6 imagine. Okay. We don't have any other special
7 conditions of parole. The biggest single item,
8 issue is the NA and we're going to be testing
9 you while you're on parole. And of course it
10 goes without saying that there are going to be
11 other parole conditions. For example if your
12 father, if you go to live your father and he has
13 a gun in the house he's going to have to remove
14 it, okay. Because you can't ever possess a gun
15 as an ex-felon. You'll always unfortunately be
16 an ex-felon, okay. But in the free world that's
17 not so bad. So do you have any questions of me
18 or us?

19 INMATE HERNANDEZ: No questions.

20 PRESIDING COMMISSIONER SAWYER: Okay.
21 Counsel?

22 ATTORNEY TARDIFF: I have none.

23 PRESIDING COMMISSIONER SAWYER: Okay.

24 ATTORNEY TARDIFF: Thank you.

25 PRESIDING COMMISSIONER SAWYER: Your
26 welcome. Oh, now, as was, as you've heard

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1 before, this decision goes to the Decision
2 Review Unit at the Board of Prison (sic)
3 Hearings. That's our legal folks who will look
4 over and make sure all of our calculations are
5 correct and we've done everything that we need
6 to do by law and regulation. Then it's sent
7 over to the Governor's Office. And the Governor
8 and his staff, his staff will make
9 recommendations to him whether to let it go or
10 let it happen or reverse it. If it is reversed
11 you'll be notified and then it comes back to the
12 Board. There's 12 commissioners, 11 other
13 commissioners and myself in the state. We meet
14 once a month and we look at anything the
15 Governor has concerns about. We meet and
16 discuss those. And we can send it back from
17 that meeting to the Governor and say we don't
18 agree with you Governor. Which we do, which we
19 do often. So it's, we send it back and forth.
20 The Governor can do what he wants at that point.
21 He can reverse your decision. Let me, let me
22 tell you, if for some reason something happens
23 at the state level and it comes back it's
24 reversed don't get discouraged. Don't get
25 discouraged. Sometimes that's not officially a
26 test but that is a test. That's testing you to
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1 see if you are really going to be able to put up
2 with some stress. Having a date, getting it
3 reversed, oh, so, you know, your character will
4 show at that point. You don't want to get any
5 115's between now and ever. You get a 115 or
6 have a problem along the line, I'd also advise
7 you not to, try to keep it under your hat. It's
8 not easy to do I know. The rumors run around
9 here all the time. But try to keep it under
10 your hat as much as you can so nobody gets
11 jealous. And --

12 DEPUTY COMMISSIONER ROTH LISBERGER: Tries
13 to sabotage you.

14 PRESIDING COMMISSIONER SAWYER: Yes
15 sabotage your date. Getting you into a mutual
16 combat --

17 DEPUTY COMMISSIONER ROTH LISBERGER: And
18 they will.

19 PRESIDING COMMISSIONER SAWYER: -- or
20 something like that. You know how to handle
21 that. You've never had a mutual combat, okay.
22 So what we're saying is walk on eggs for a
23 while. You'll probably hear in about three or
24 four months. By law they're supposed to let you
25 know within 120 days but sometimes that doesn't
26 happen because we're doing an awful lot of

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1 hearings now. We're really cranked up on
2 hearings. And I can tell you that out of the
3 dates I've given I've had the Governor reverse
4 two of them and I won both of those at the Board
5 meeting. And I've given a number of dates. So
6 I've got -- He's letting mine go through for
7 some reason or another. Some people get more.
8 What can I say? So we're optimistic for you
9 Mr. Hernandez. We're hoping that you get your
10 date and go live with your mom and dad and your
11 sister and you reunite yourself with your
12 children and your grandchildren and live a
13 successful life. We've got all the confidence
14 in you. We don't think we'll be reading about
15 you in the newspaper doing something bad. Maybe
16 we'll be reading some of your literature.

17 INMATE HERNANDEZ: Hopefully yes.

18 PRESIDING COMMISSIONER SAWYER: Okay.

19 INMATE HERNANDEZ: Absolutely.

20 PRESIDING COMMISSIONER SAWYER: All
21 right, that concludes -- Do you have anything
22 you'd like to say?

23 DEPUTY COMMISSIONER ROTH LISBERGER: No,
24 just to wish you all the best of luck.

25 INMATE HERNANDEZ: Thank you very much.

26 //

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1 DEPUTY COMMISSIONER ROTHLLISBERGER: Carry
2 your message always.

3 PRESIDING COMMISSIONER SAWYER: Okay,
4 we're 17 minutes past one and that concludes
5 this hearing.

6 --oOo--
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23 PAROLE GRANTED

24 THIS DECISION WILL BE FINAL ON: _____

OCT 16 2006

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.

27 HECTOR HERNANDEZ D-33689 DECISION PAGE 20 06/08/06

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, RAMONA COTA, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 68, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of HECTOR HERNANDEZ, CDC NO. D-33689, on JUNE 8, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated July 3, 2006, at Sacramento County, California.



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